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MAY 09 2006

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

MERRILL LYNCH, PIERCE, FENNER
AND SMITH, INCORPORATED, a
corporation organized and existing under
the laws of the State of Delaware with its
principal place of business in New York,
New York,

Plaintiff - Appellee,

v.

ENC CORPORATION; SUNTRUST
INVESTMENT CO., S.A., a corporation
organized and existing under the laws of
Switzerland with an address at rue de
Jargonnant 2, P.O. Box 76, 1211 Geneva 6,
Switzerland; JOHN K. BURNS, a citizen
of the United States, with an address at 300
Wacker Drive, Suite, 900, Chicago,
Illinois, 60606; THE ESTATE OF
FERDINAND E. MARCOS; IMELDA R.
MARCOS; FERDINAND R. MARCOS,
JR.; MARIA IMELDA MARCOS; IRENE
MARCOS ARANETA; FRONTIER RISK
CAPITAL MANAGEMENT, L.C.C., a
limited liability company organized and
existing under the laws of the States of
Nevada, with a registered office at 6100
Neil Road, Suite 500, Reno, NV. 89511
and an address at 300 Wacker Drive, Suite
900, Chicago, IL 60606; GROSVENOR

No. 04-16401

D.C. No. CV-00-00595-MLR

ORDER AMENDING
OPINION

RECEIVED
CLERK, U.S. DISTRICT COURT

APR 11 2007

DISTRICT OF HAWAII

CAPITAL LTD., a company organized and existing under the law of the United Kingdom, with an address at Grosvenor Gardens House, Suite 117, 35-37 Grosvenor Gardens, London SW1 W OBS, United Kingdom; THE ESTATE OF ROGER ROXAS; GOLDEN BUDHA CORPORATION, a corporation organized and existing under the laws of the State of Georgia, with a registered office at 710 West First Street, Blue Ridge, Georgia 30513, and a mailing address at 260 Carrollton St., Buchanan, GA 30113,

Defendants,

and,

ARELMA, INC., a corporation organized and existing under the laws of Panama with a permanent address at Ave. Justo Alosemena y Calle 41 Este, No. 40-59 Pte al Colegio Immaculada, Panama 1.Rep.de Panama, and a mailing address at c/o Suntrust Investment Co.S.A., ru de Jargonnant 2, P.O. Box 76, 1211 Geneva 6, Switzerland;,

Defendant - Appellant,

MARIANO J. PIMENTAL, on behalf of himself and all other persons similarly situated;,

Defendant - Appellee,

PHILIPPINE NATIONAL BANK,

Defendant - Appellant.

MERRILL LYNCH, PIERCE, FENNER
AND SMITH, INCORPORATED, a
corporation organized and existing under
the laws of the State of Delaware with its
principal place of business in New York,
New York,

Plaintiff - Appellee,

v.

ENC CORPORATION; ARELMA, INC., a
corporation organized and existing under
the laws of Panama with a permanent
address at Ave. Justo Alosemena y Calle
41 Este, No. 40-59 Pte al Colegio
Immaculada, Panama 1.Rep.de Panama,
and a mailing address at c/o Suntrust
Investment Co.S.A., ru de Jargonnant 2,
P.O. Box 76, 1211 Geneva 6, Switzerland;
SUNTRUST INVESTMENT CO., S.A., a
corporation organized and existing under
the laws of Switzerland with an address at
rue de Jargonnant 2, P.O. Box 76, 1211
Geneva 6, Switzerland; JOHN K. BURNS,
a citizen of the United States, with an
address at 300 Wacker Drive, Suite, 900,
Chicago, Illinois, 60606; THE ESTATE
OF FERDINAND E. MARCOS; IMELDA
R. MARCOS; FERDINAND R.
MARCOS, JR.; MARIA IMELDA
MARCOS; IRENE MARCOS ARANETA;
FRONTIER RISK CAPITAL
MANAGEMENT, L.C.C., a limited
liability company organized and existing

No. 04-16503

D.C. No. CV-00-00595-MLR

under the laws of the States of Nevada, with a registered office at 6100 Neil Road, Suite 500, Reno, NV. 89511 and an address at 300 Wacker Drive, Suite 900, Chicago, IL 60606; GROSVENOR CAPITAL LTD., a company organized and existing under the law of the United Kingdom, with an address at Grosvenor Gardens House, Suite 117, 35-37 Grosvenor Gardens, London SW1 W OBS, United Kingdom; THE ESTATE OF ROGER ROXAS; GOLDEN BUDHA CORPORATION, a corporation organized and existing under the laws of the State of Georgia, with a registered office at 710 West First Street, Blue Ridge, Georgia 30513, and a mailing address at 260 Carrollton St., Buchanan, GA 30113; PHILIPPINE NATIONAL BANK,

Defendants,

and,

MARIANO J. PIMENTAL, on behalf of himself and all other persons similarly situated;

Defendant - Appellee,

REPUBLIC OF THE PHILIPPINES;
PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT, a government
agency of the Republic of the Philippines,

Defendants - Appellants.

MERRILL LYNCH, PIERCE, FENNER
AND SMITH, INCORPORATED, a
corporation organized and existing under
the laws of the State of Delaware with its
principal place of business in New York,
New York,

Plaintiff - Appellee,

v.

ENC CORPORATION; ARELMA, INC., a
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the laws of Panama with a permanent
address at Ave. Justo Alosemena y Calle
41 Este, No. 40-59 Pte al Colegio
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Chicago, Illinois, 60606; THE ESTATE
OF FERDINAND E. MARCOS; IMELDA
R. MARCOS; FERDINAND R.
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MARCOS; IRENE MARCOS ARANETA;
FRONTIER RISK CAPITAL
MANAGEMENT, L.C.C., a limited
liability company organized and existing
under the laws of the States of Nevada,
with a registered office at 6100 Neil Road,
Suite 500, Reno, NV. 89511 and an

No. 04-16538

D.C. No. CV-00-00595-MLR

address at 300 Wacker Drive, Suite 900,
Chicago, IL 60606; GROSVENOR
CAPITAL LTD., a company organized and
existing under the law of the United
Kingdom, with an address at Grosvenor
Gardens House, Suite 117, 35-37
Grosvenor Gardens, London SW1 W OBS,
United Kingdom; PHILIPPINE
NATIONAL BANK; REPUBLIC OF THE
PHILIPPINES; PRESIDENTIAL
COMMISSION ON GOOD
GOVERNMENT, a government agency of
the Republic of the Philippines,

Defendants,

and,

THE ESTATE OF ROGER ROXAS;
GOLDEN BUDHA CORPORATION, a
corporation organized and existing under
the laws of the State of Georgia, with a
registered office at 710 West First Street,
Blue Ridge, Georgia 30513, and a mailing
address at 260 Carrollton St., Buchanan,
GA 30113;;

Defendants - Appellants,

MARIANO J. PIMENTAL, on behalf of
himself and all other persons similarly
situated,

Defendant - Appellee.

Appeal from the United States District Court
for the District of Hawaii

Manuel L. Real, District Judge, Presiding

Argued and Submitted March 14, 2005
San Francisco, California

Before: NOONAN, THOMAS, Circuit Judges, and ROBART*, District Judge.

The opinion filed on May 4, 2006, is amended as follows: on slip opinion page 5038, lines 29-32, the following sentence is deleted: “The phrase ‘equity and good conscience’ in our judicial usage is coterminous with the first opinions of the United States Supreme Court. *See Hollingsworth v. Ogle*, 1 U.S. 257 (1788).”

On slip opinion page 5038, line 29, the following sentence is added: “The phrase ‘equity and good conscience’ in our judicial usage is coterminous with the early opinions of the United States Supreme Court. *See Elmendorf v. Taylor*, 23 U.S. (10 Wheat.) 152, 181 (1825).”

* The Honorable James L. Robart, United States District Judge for the Western District of Washington, sitting by designation.

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04-16401 Merrill Lynch, v. Arelma, Inc., et al

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04-10538 Merrill Lynch, v. Estate of Roger, et al

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ARANETA

Defendant

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Defendant

Terry R. Grimm
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Defendant - Appellant

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